

C. PROTECTIVE PAYEES

Purpose: This section describes who can be a protective payee, which situations require that a protective payee be established and the protective payees responsibilities. This section also describes how to develop and review protective payee plans.

Effective July 1, 2002

WAC 388-460-0020 Who is a protective payee?

- (1) A protective payee is a person or an employee of an agency who manages client cash benefits to provide for basic needs - housing, utilities, clothing, child care, and food. They may also provide services such as training clients how to manage money.
- (2) Clients are assigned to protective payees for the following reasons:
 - (a) Emergency or temporary situations where a child is left without a caretaker (TANF/SFA) per WAC 388-460-0030,
 - (b) Mismanagement of money (TANF/SFA, GA, or WCCC) per WAC 388-460-0035,
 - (c) Non-cooperation with WorkFirst program requirements per WAC 388-310-1600 or 1650, or
 - (d) Pregnant or parenting minors per WAC 388-460-0040.

CLARIFYING INFORMATION

1. Under WAC 388-460-0001 (1)(d) the department can establish a protective payee for cash benefits in many situations including but not limited to the following:
 - a. The head of the assistance unit is an unmarried pregnant or parenting minor; See **TEEN PARENTS**.
 - b. A TANF/SFA parent is in sanction status for not participating in a WorkFirst activity; See **WorkFirst – Sanction/ Child SafetyNet Payment**.

- c. The adult head of the assistance unit has demonstrated an inability to use the cash benefits in a responsible manner;
 - d. A person having had an ADATSA assessment and are participating in an ADATSA funded chemical dependency treatment. See **CHEMICAL DEPENDENCY – C. – ADATSA – General Information**.
- 2. A protective payee is not responsible for maintaining client eligibility; that is still the client's responsibility.
- 3. Vendor payments are most often done for cash benefits issued under the Additional Requirements programs. See **EMERGENCY ASSISTANCE: ADDITIONAL REQUIREMENTS (AREN) AND ONGOING ADDITIONAL REQUIREMENTS (OAR)**.

WORKER RESPONSIBILITIES

1. Assessing the need for a protective payee:

Social Workers/ WorkFirst Program Specialists assess the need for a participant to be assigned to protective payee status, using the Protective Payee Assessment Form (DSHS 14-349A). Use this form to identify the reasons protective payee payments are needed and mail or fax a copy of the form to the protective payee.

2. Automatic assigning of protective payee:

Some circumstances automatically require participants be assigned to protective payee status. These include:

- a. Participants in sanction status or in Child SafetyNet Payment status for non-cooperation with WorkFirst requirements. See WAC 388-460-0045
- b. Teen parents (non-married, non-emancipated pregnant or parenting teens under age 18). See WAC 388-460-0040
- c. Emergency assignment when the caregiver is temporarily out of the home. See WAC 388-460-0030
- d. Persons using their EBT card or money from EBT to buy or pay for lottery tickets or pari-mutuel. See WAC 388-460-0035

If you receive a complaint about a participant using their EBT card or money from their EBT card for this purpose, you need to refer the caller to (360) 413-3347. All of these complaints will be investigated.

3. Protective payee plan:

A Protective Payee Plan (DSHS 14-439) is completed and indicates when there are payments other than verified housing and utility expenses. Mail or fax a copy of this form to the protective payee. See WAC 388-460-0060

4. Selecting and assigning a protective payee:

- a. The WorkFirst Program Specialist/Social Worker is responsible for assigning the protective payee vendor. You should allow the participant to participate in the process. Participants can suggest whom they want for an emergency protective payee.
- b. Participants are assigned to a protective payee using the Protective Payee Vendor Case Assignment and Closure (DSHS 14-426). Use this form when you are assigning the participant for services and when you are closing the service and mail for fax a copy to the protective payee.
- c. Participants, who do not speak or read English, may be assigned to protective payees who are bi-lingual. If none are available, arrangements must be made by the Community Services Office (CSO) to assist with interpreter services by three-way telephone or other means that allows interpretation for the participant.

5. Notifying the participant and the protective payee of the assignment:

- a. Timing of assignment is very important. If a case is assigned near or after ACES cut-off, the grant may not be sent to the protective payee the next month.
- b. Assignment to a protective payee is a negative action. Advance and adequate notice (minimum of 10 days) to on-going participants must be given before assignment becomes effective. Ten-day notice to applicants is not required before assignment if the applicant is notified when the case is approved that a protective payee is assigned.

- c. Protective payees are notified via e-message when a participant is referred for services. For TANF cases, entering the e-JAS protective payee code (PP) and the contractor ID code will auto generate an e-message to the protective payee that the participant is being referred for services. The protective payee will accept or reject the referral in e-JAS and send an e-message back to the assigned case manager. For GA and WCCC cases, it will still require the DSHS 14-429 Protective Payee Vendor Assignment and Closure be sent to the protective payee.
- d. If the protective payee does not have e-JAS, you will need to notify the protective payee via phone, fax, e-mail, etc...Whether or not the protective payee has e-JAS access, all forms must be mailed or faxed to the protective payee for their records.
- e. Protective payees need to be notified of Necessary Supplemental Accommodations (NSA) participants. DSHS staff must contact the provider directly and provide the particular accommodations that are appropriate on the case. Services for NSA participants may also need to be provided at the CSO.

6. Extremely difficult cases:

Some cases prove to be extremely difficult. Some participants are difficult to serve because of mental health problems, involvement with drugs, and aggressive behavior. Protective payees can refuse to provide services. If it is not possible to find protective payee to accept these participants then there are three alternative ways to provide services:

a. Direct vendor payments:

Direct payments via vendor payments must be changed in ACES before cut-off to be effective the first of the month. Vendor payments are not well suited to situations where the rent and utilities costs change each month. (See ACES Manual for directions on direct vendor payments)

b. Use a staff person as protective payee:

The department prefers not to add the duties of protective payee to staff position. It is not funded or allocated. Only select staff can serve in this capacity. No one with responsibility over the assigned participant can fill this role.

- c. Establish a limited guardianship. See WAC 388-460-0050

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WAC 388-460-0025 Who can be a protective payee?

- (1) Clients may ask for a particular protective payee, but the department makes the final choice.
- (2) Protective payees must contract with the department, except for employees of the department who are assigned this function as part of their job duties.
- (3) The contracted protective payee and their staff must pass a criminal background check for the crimes listed in WAC 388-06-0170, 0180 and 0190.
- (4) A departmental employee acting as a protective payee cannot:
 - (a) Have the client in their caseload,
 - (b) Have the client in the caseloads of other employees under their supervision,
 - (c) Be responsible for determining or issuing benefits for the client,
 - (d) Be the office administrator, or
 - (e) Be a special investigator.
- (5) For TANF/SFA, a department employee cannot act as a protective payee when the department has legal custody or responsibility for placement and care of the child.

CLARIFYING INFORMATION

Criminal Background Check

All protective payees, their employees, and their designees who have unsupervised access to participants must pass a yearly criminal background check. This background check is administered by the DSHS Criminal Background Check Unit (CBCU). Some offenses automatically disqualify a protective payee See WACs 388-06-0170 and 0180.

If the crime is not an immediate disqualification, then DSHS headquarters staff review the background check on a case-by-case basis to decide whether or not the protective payee should be disqualified. See WAC 388-06-0190

WORKER RESPONSIBILITIES

1. The regional designee notifies protective payees that:
 - a. They must complete a Background Inquiry Application form, DSHS 09-891;
 - b. Indicate at the top of the form that you are requesting a background check for a protective payee; and
 - c. Any of their employees or designees who have unsupervised access to participants must also complete this form.
2. The regional designee sends the forms to the CBCU at MS 45035 or by fax to (360) 902-0292.
3. The regional designee reviews the results of the background check. A protective payee, a payee's employee, or designee cannot provide protective payee services to our participants if they fail the background check.

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WAC 388-460-0030 When is an emergency or temporary protective payee (TANF/SFA) used?

An emergency or temporary protective payee is assigned when a caretaker relative or adult acting in loco parentis per WAC 388-454-0005 is not available to take care of and supervise a child due to an emergency.

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WAC 388-460-0035 When is a protective payee assigned for mismanagement of funds?

- (1) The decision to assign a person to a protective payee because of mismanagement of funds must be based on law or with proof the client is unable to manage their cash benefits. The proof must be current and show how this threatens the well being of a child or client on TANF/SFA, GA or WCCC.

Examples of proof are:

- (a) (a) Department employees or others observe that the client or client's children are hungry, ill, or not adequately clothed;
- (b) Repeated requests from the client for extra money for basic essentials such as food, utilities, clothing, and housing.
- (c) A series of evictions or utility shut off notices within the last twelve months.
- (d) Medical or psychological evaluations showing an inability to handle money.
- (e) An ADATSA alcohol/drug assessment establishing incapacity due to substance abuse.
- (f) Not paying an in-home child care provider for services when payment has been issued to the client by the department for that purpose.
- (g) A complaint from businesses showing a pattern of failure to pay bills or rent.
- (h) Using public assistance Electronic Benefits Transfer (EBT) card or cash through EBT to purchase or pay for lottery tickets, pari-mutuel wagering, or any of the activities authorized under chapter 9.46 RCW.
- (i) A lack of money or a temporary shortage of money because of an emergency does not constitute mismanagement.
- (j) When a client has a history of mismanaging money, benefits can be paid through a protective payee or directly to a vendor.

CLARIFYING INFORMATION

Assessment For Mismanagement Of Funds

1. Cases are assessed on an individual basis to determine if there is mismanagement of funds. Cases can be referred for a Protective Payee assessment for a number of reasons. Examples are:
 - a. Multiple requests for emergency additional requirements or eviction notice

or shut off notices.

- b. Landlords threaten to evict participants that aren't paying rent.
- c. Participants request help to deal with bills or get housing.
- d. Neighbors or family members complain that children are hungry or ill clothed.
- e. Participants who receive direct child care payments with a history of failure to pay the third party provider.

2. Evaluate the case:

- a. Is the complaint legitimate?
 - b. What is the history in the case notes?
 - c. Are public assistance funds being used for basic needs?
 - d. Are there difficulties due to basic lack of funds?
 - e. Are assistance funds being used for other things?
 - f. Are the children and/or the participant at risk?
3. Include an interview with the participant as part of the assessment and assignment, when possible. If the participant is uncooperative, complete the action without their input.
4. A basic lack of funds is not grounds for establishing mis-management, but it may indicate a need for other help such as housing assistance. An example is where a roommate has moved out or the participant has only just come on assistance and the participant is not able to pay the rent.

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WAC 388-460-0045 When is a protective payee assigned to TANF/SFA pregnant or parenting minors?

Pregnant or parenting minors must be assigned to protective payees if the clients are:

- (1) Head of a household;
- (2) Under age 18;
- (3) Unmarried; and
- (4) Pregnant or have a dependent child.

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WAC 388-460-0045 Are clients in WorkFirst sanction status assigned protective payees?

- (1) Clients in sanction status for non-cooperation or non-participation in WorkFirst work activities are assigned to protective payees following the rules in WAC 388-310-1600 and 1650.
- (2) Clients in sanction status remain in protective payee status until they cooperate with WorkFirst and the sanction is removed, as long as they are receiving assistance.

CLARIFYING INFORMATION

A Protective Payee Plan (DSHS 14-349) is required for sanction cases:

1. For sanctions, set up the plan to pay housing and utilities with the remainder of the money being returned to the participant.
2. Child SafetyNet Payment (CSNP) – A Protective Payee Plan is required for all participants in CSNP. Protective payees will only be using funds for rent, utilities, and the verified needs of the children. The plan needs to specify this. Any expenditure that is not allowed specifically in the Payee's Handbook or protective payee plan is to be discussed with the WorkFirst Program Specialist. The WorkFirst Program Specialist documents approval/denial in e-JAS under

protective payee notes. No CSNP funds are to be returned to the State unless you lose contact with the client. The funds must be expended on the child(ren)'s needs.

3. Moving from CSNP to sanction – When a participant moves from CSNP to sanction, the Protective Payee Plan needs to be updated to tell the protective payee that any remaining funds after housing and utility payments can now be returned to the participant.
4. CSNP is always cured at the first of the month so it is very important that the protective payee is notified within one business day from when client participation is verified. An e-message is generated when you change the e-JAS component code from SN to SA.
5. Some protective payees do not have access to the e-JAS system. If this is the case, some other form of communication will need to be used (i.e., e-mail, ACES referral, fax, etc.).

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WAC 388-460-1375 When is a client transferred from a protective payee to guardianship?

- (1) In emergency cases where a person is physically or mentally unable to manage their own funds, the client is referred to other divisions of the department for full care, including guardianship.
- (2) In cases where a child is eligible for TANF/SFA and the caretaker relative does not use the benefits for adequate care of the child, the case can be referred to the attorney general to establish a limited guardianship.
- (3) Guardianships are used only if it appears there is a need for services that are expected to last longer than two years.
- (4) These guardianships are limited to management of DSHS benefits.
- (5) The protective payee plan is changed if a guardian is appointed. The guardian is designated as the payee.

CLARIFYING INFORMATION

Limited guardianship can only be used on TANF/SFA cases. If a case fits the following criteria, consider referring to the assistant attorney general to establish a limited guardianship:

1. The case has been in protective payee status or is expected to be, for over two years,
2. It is not anticipated that the responsible adult will be able to manage the funds for the assistance unit,
3. There are no protective payee vendors which will provide services for the case, and
4. Other alternatives for services have been explored and have proven unfeasible.

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WAC 388-460-1450 What are the protective payee's responsibilities?

- (1) The protective payee's responsibilities are to:
 - (a) (a) Manage client cash and child care assistance benefits to pay bills for basic needs, such as housing and utilities, or as directed in the protective payee plans,
 - (b) Provide money management for client if this item is included in the protective payee plans,
 - (c) Encourage clients to comply with WorkFirst and other program requirements, such as getting a job or attending school, and
 - (d) Provide reports to the department on client progress.

CLARIFYING INFORMATION

1. Protective payees provide financial management services to DSHS participants. They work with individual participants to pay their bills, maintain records, complete reports, and work with DSHS staff.

2. Protective payees have three main areas of responsibility:
 - a. Managing participants' funds;
 - b. Providing money management training; and
 - c. Maintaining account and case records and providing reports to DSHS.
3. Protective payees are required to complete and keep the Protective Payee Report (DSHS 01-110 and 01-110C) - This form is used to record how the participant's money was used and how the participant is progressing. These forms will be reviewed every six months during contract monitoring.
4. Protective payees are required to complete, send in and keep a copy of the Protective Payee Periodic Social Services Report (DSHS 01-110A) - This is completed and sent in to the social service worker three months after the initial contact and every six months thereafter. This is used to summarize social service information about the participant. See [WAC 388-460-0060](#)

5. **Fraud:**

Whenever any State employee has a suspicion or there is an allegation of criminal activity or potential fraud the following policy must be followed:

- a. Do not investigate the allegation nor take any action against the protective payee.
- a. Follow DSHS Administrative Policy 10.06, which states: Any employee who suspects criminal activity on the part of a contracted vendor must report it to Central Contracts Services (CCS). This report should come out under the signature of the Regional Administrator or designee.
 - (1) CCS refers to the Division of Fraud Investigations (DFI)
 - (2) DFI investigates the allegation and reports to Region with the findings.
 - (3) DFI refers any overpayments to the Division of Financial Recovery (DFR).
 - (4) Regions takes appropriate action with the protective payee

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WAC 388-460-0060 When are protective payee plans done?

A protective payee plan may be developed when a case is assigned to a protective payee.

- (1) A copy of the plan is provided to the protective payee and the client.
- (2) All cases, except for when a protective payee is assigned due to sanction status, must be reviewed:
 - (a) After an initial three-month period and
 - (b) At least every six months beyond the initial period for on going cases.
- (3) Reviews include evaluation of:
 - (a) The need for the client to continue in protective payee status; or
 - (b) The need to change the plan; or
 - (c) The client's potential to assume control of their funds (or be removed from protective payee status); and
 - (d) Protective payee performance.

WORKER RESPONSIBILITIES**Completing A Protective Payee Plan**

1. The WorkFirst Program Specialist/Social Worker completes the initial Protective Payee Plan (DSHS 14-349). Include any specific instructions you want the protective payee to follow, such as holding funds back for future rent or to disperse funds evenly at weekly intervals. Make sure you include information about the provider for child care cases.
 - a. Send a notice to the participant setting an appointment time for completing the plan. Assignment to a protective payee is considered a negative action that requires a 10-day notice because it limits participant access to monetary benefits.

- b. Include the participant in the process, if possible.
 - c. If the participant appears, discuss the reasons for establishing a protective payee and how to remove the protective payee. The participant does not have to agree to the protective payee plan. Have the participant sign the form. Give the participant a copy whether or not signed.
 - d. If a participant does not show up for the appointment, complete the Protective Payee Plan based on available case information. Note on the plan that the participant did not appear. Send a copy to the participant.
2. Place the original plan in the case file. Send a copy to the assigned protective payee, along with the assignment form.

Changing the Protective Payee Plans

Protective Payee Plans can be modified. All changes **must** be documented in the case file and a copy of the revised Protective Payee Plan provided to the vendor and the participant within one business day.

Case Reviews

Cases assigned to protective payee status must be reviewed on a regular basis to see if a protective payee is still needed. Most cases assigned due to mismanagement can be removed from protective payee status if it appears they have gained the skills needed to manage their funds. Teen parents are the exception who remain in protective payee status until they turn 18, become emancipated or until they marry. Cases assigned due to sanction or Child SafetyNet Payment status for non-cooperation must remain in payee status until they cure their sanction status.

All reviews require the worker to re-assess the need for a protective payee, review of the protective payee plan and assignment of the appropriate protective payee. Any case that continues in protective payee status requires a new protective payee plan if there was one created before. Even though the elements may be the same, the dates will differ.

Workers should have a summary social services report from the vendor for each three-month service period. Workers should use these materials and the case record notes for review. Participant contact and further staffing of cases is also recommended, as time allows.

1. Initial

All cases assigned to protective payee status **must** be reviewed after the first three months. Since these reviews need to include the quarterly Protective Payee Periodic Social Services Report (DSHS 01-110A), actual completion dates will be between three and four months.

2. Regular

After the first review at three months, each case must be reviewed every six months. Completion of these reports should be completed within a month of the 6-month period.

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WAC 388-460-0065 When is the protective payee status ended and how is a protective payee changed?

A client may be removed from a protective payee status when a:

- (1) Protective payee requests the client be reassigned;
- (2) The department assigns a different protective payee; or
- (3) Protective payee is no longer required.

CLARIFYING INFORMATION

1. Participants can be transferred from one Protective Payee to a new one. This action should be used if a Protective Payee requests transfer of a participant or if a participant is unhappy with a protective payee and in your professional opinion you feel another protective payee would work better with the participant or when needed.
2. If a protective payee requests a participant be removed from their caseload, that action must be taken as soon as possible.
3. Cases that transfer between CSOs may retain the same protective payee. In those cases, no additional action is needed. If they move out of a service area of a protective payee, they will need to have a new protective payee assigned. In

these cases, the DSHS 14-426 is sent to the protective payee to end the case assignment. The case manager/social worker needs to work closely with the new CSO or old Protective Payee to assure that the check is not sent to the old protective payee.

4. The protective payee returns to the State any money retained on the client's account using DSHS 01-210. No money is returned to the CSO.

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WAC 388-460-0070 What are your fair hearing rights regarding protective payment?

You have the right for a fair hearing if you disagree with the department's decision to:

- (1) Assign payment of benefits through a protective payee,
- (2) Continue the assignment,
- (3) Change the protective payee selected for you, or
- (4) Change the contents of your protective payee plan.